IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6307 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABHESINH @ ABHAYSINH P RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6307 of 2002

M/S THAKKAR ASSOC. for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/08/2002

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order of detention dated

31/1/2002 passed by the District Magistrate, Junagadh, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, against the impugned order of detention, the petitioner made a detailed representation on 28/6/2002 to the detaining authority through advocate, which has been received by the detaining authority on 3/7/2002, copy of acknowledgment receipt is produced on page No.39-A of this petition. But till today neither the same has been decided nor the detaining authority has given any reply to the petitioner. He has further argued that the detaining authority has failed to discharged its duty, and hence, according to the learned advocate for the petitioner, there is total inaction on the part of the detaining authority which is unconstitutional and on this ground alone, the impugned detention order is required to be quashed and set aside. In support of his say, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under:-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

3. Since the detaining authority has not decided the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

4. In view of the above, the petition is allowed. The order of detention dated 31/1/2002 passed against the

detenu is hereby quashed and set aside. The detenu namely Abhesinh @ Abhaysinh P. Rathod is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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